

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

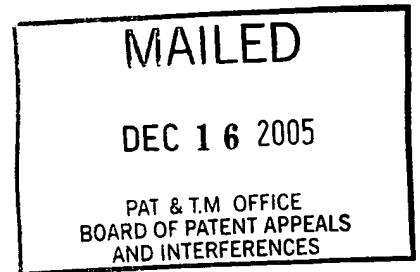
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Ex parte ALBERT J. FRATTAROLA

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Application No. 09/803,221

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was electronically received at the Board of Patent Appeals and Interferences on October 31, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

A review of the file indicates that the appeal brief filed March 7, 2005 does not fully comply with 37 CFR § 41.37(c).

37 CFR § 41.37(c) states:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(I) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need

only substantially comply with paragraphs (c)(1)(I) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(ix) *Evidence appendix*. An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) *Related proceedings appendix*. An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

A review of the application indicates that the following appropriate sections are missing from the appeal brief filed March 7, 2005:

- 1) "Evidence appendix" as set forth in 37 CFR § 41.37(c)(1)(ix); and
- 2) "Related proceedings appendix" as set forth in 37 CFR § 41.37(c)(1)(x).

A supplemental appeal brief that is in compliance with the headings as set forth under 37 CFR § 41.37 are required. For more information on the Board's new rules see the web page entitled More Information on the Rules of Practice Before the BPAI, Final Rule at:

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<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

Also, on May 27, 2005, the examiner has mailed an examiner's answer. In the Evidence Relied Upon section, paragraph (8), the examiner has stated that "No evidence is relied upon by the examiner in the rejection of the claims under appeal." A review of the file reveals that references to Damm(US 5,462,395) and Ernest(US 3,465,803) were applied to the statement of rejections in the Grounds of Rejection section, paragraph (9), on page 3 of the examiner's answer. Before further review, the examiner must submit a corrected examiner's answer that will include in the Evidence Relied Upon section, the list of references mentioned in the statement of rejections. Appropriate correction is required.

Accordingly, it is

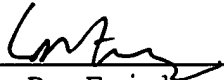
ORDERED that this application be returned to the examiner for: 1) hold the appeal brief of March 7, 2005 defective; 2) request appellants to file a supplemental appeal brief in compliance with 37 CFR § 41.37; 3) consider the supplemental appeal brief; 4) vacate the examiner's answer mailed May 27, 2005, and issue a revised Examiner's Answer having the missing references listed under the Evidence Relied Upon section, paragraph (8); and 5) for such further action as may be appropriate.

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It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the status of this appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By: \_\_\_\_\_

  
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CRF/tdl